

**49-23-101. Title.**

This chapter is known as the "New Public Safety and Firefighter Tier II Contributory Retirement Act."

Enacted by Chapter 266, 2010 General Session

**49-23-102. Definitions.**

As used in this chapter:

(1) (a) "Compensation" means the total amount of payments that are includable in gross income received by a public safety service employee or a firefighter service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of any amounts the public safety service employee or firefighter service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.

(c) "Compensation" does not include:

- (i) overtime;
- (ii) sick pay incentives;
- (iii) retirement pay incentives;
- (iv) the monetary value of remuneration paid in kind, as in a residence, use of equipment or uniform, travel, or similar payments;
- (v) a lump-sum payment or special payment covering accumulated leave; and
- (vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).

(2) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.

(3) "Final average salary" means the amount computed by averaging the highest five years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), and (d).

(a) Except as provided in Subsection (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(a) may be exceeded if:

- (i) the member has transferred from another agency; or
  - (ii) the member has been promoted to a new position.
- (c) If the member retires more than six months from the date of termination of

employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.

(d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.

(4) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department, but does not include secretarial staff or other similar employees.

(5) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter. An employee of a regularly constituted fire department who does not perform firefighter service is not a firefighter service employee.

(6) (a) "Line-of-duty death" means a death resulting from:

(i) external force, violence, or disease occasioned by an act of duty as a public safety service or firefighter service employee; or

(ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as a public safety service or firefighter service employee.

(b) "Line-of-duty death" does not include a death that:

(i) occurs during an activity that is required as an act of duty as a public safety service or firefighter service employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature;

(ii) occurs during the commission of a crime committed by the employee;

(iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death; or

(iv) occurs in a manner other than as described in Subsection (6)(a).

(7) "Participating employer" means an employer which meets the participation requirements of:

(a) Sections 49-14-201 and 49-14-202;

(b) Sections 49-15-201 and 49-15-202;

(c) Sections 49-16-201 and 49-16-202; or

(d) Sections 49-23-201 and 49-23-202.

(8) (a) "Public safety service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

(i) law enforcement officer in accordance with Section 53-13-103;

(ii) correctional officer in accordance with Section 53-13-104;

(iii) special function officer approved in accordance with Sections 49-15-201 and 53-13-105; and

(iv) full-time member of the Board of Pardons and Parole created under Section 77-27-2.

(b) Except as provided under Subsection (8)(a)(iv), "public safety service" also requires that in the course of employment the employee's life or personal safety is at

risk.

(9) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.

(10) (a) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.

(b) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.

(11) "System" means the New Public Safety and Firefighter Tier II Contributory Retirement System created under this chapter.

(12) (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter service employee, but who:

(i) has been trained in firefighter techniques and skills;

(ii) continues to receive regular firefighter training; and

(iii) is on the rolls of a legally organized volunteer fire department which provides ongoing training and serves a political subdivision of the state.

(b) An individual that volunteers assistance but does not meet the requirements of Subsection (12)(a) is not a volunteer firefighter for purposes of this chapter.

(13) "Years of service credit" means:

(a) a period, consisting of 12 full months as determined by the board; or

(b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter.

Amended by Chapter 40, 2013 General Session

#### **49-23-103. Creation of system.**

(1) There is created for members employed by a participating employer the "New Public Safety and Firefighter Tier II Contributory Retirement System."

(2) The New Public Safety and Firefighter Tier II Contributory Retirement System includes:

(a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement System; and

(b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution Plan.

Enacted by Chapter 266, 2010 General Session

#### **49-23-104. Creation of trust fund.**

(1) There is created the "New Public Safety and Firefighter Tier II Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering the defined benefit portion of this system.

(2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Enacted by Chapter 266, 2010 General Session

**49-23-201. System membership -- Eligibility.**

(1) Beginning July 1, 2011, a participating employer that employs public safety service employees or firefighter service employees shall participate in this system.

(2) (a) A public safety service employee or a firefighter service employee initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, is eligible:

(i) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or

(ii) as a participant for defined contributions under the Tier II defined contributions plan established by Part 4, Tier II Defined Contribution Plan.

(b) A public safety service employee or a firefighter service employee initially entering employment with a participating employer on or after July 1, 2011, shall:

(i) make an election to participate in the system created under this chapter within 30 days from the date of eligibility for accrual of benefits:

(A) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or

(B) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan; and

(ii) electronically submit to the office notification of the member's election under Subsection (2)(b)(i) in a manner approved by the office.

(c) An election made by a public safety service employee or firefighter service employee initially entering employment with a participating employer under this Subsection (2) is irrevocable beginning one year from the date of eligibility for accrual of benefits.

(d) If no election is made under Subsection (2)(b)(i), the public safety service employee or firefighter service employee shall become a member eligible for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System.

Amended by Chapter 15, 2014 General Session

**49-23-202. Participation of employers -- Admission requirements.**

(1) (a) An employer is a participating employer and may not withdraw from participation in this system.

(b) A participating employer shall cover its:

(i) public safety service employees in accordance with Section 49-15-202; and

(ii) firefighter service employees in accordance with Section 49-16-202.

(2) (a) An employer may, by resolution of its governing body, apply for admission to this system.

(b) Upon approval of the resolution by the board, the employer is a participating employer in this system and is subject to this title.

(3) If a participating employer purchases service credit on behalf of public safety service employees or firefighter service employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former public safety service employees or firefighter service employees who were eligible for service credit at the time service was rendered.

Amended by Chapter 298, 2012 General Session

**49-23-301. Contributions.**

(1) Participating employers and members shall pay the certified contribution rates to the office to maintain the defined benefit portion of this system on a financially and actuarially sound basis in accordance with Subsection (2).

(2) (a) A participating employer shall pay up to 12% of compensation toward the certified contribution rate to the office for the defined benefit portion of this system.

(b) A member shall only pay to the office the amount, if any, of the certified contribution rate for the defined benefit portion of this system that exceeds the percent of compensation paid by the participating employer under Subsection (2)(a).

(c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.

(3) A participating employer may not elect to pay all or part of the required member contributions under Subsection (2)(b), in addition to the required participating employer contributions.

(4) (a) A member contribution is credited by the office to the account of the individual member.

(b) This amount, together with refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.

(c) A member contribution is vested and nonforfeitable.

(5) (a) Each member is considered to consent to payroll deductions of member contributions.

(b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.

(6) Benefits provided under the defined benefit portion of the Tier II hybrid retirement system created under this part:

(a) may not be increased unless the actuarial funded ratios of all systems under this title reach 100%; and

(b) may be decreased only in accordance with the provisions of Section 49-23-309.

Amended by Chapter 439, 2011 General Session

**49-23-302. Defined contribution benefit established -- Contribution by employer and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.**

(1) (a) A participating employer shall make a nonelective contribution on behalf of each public safety service employee or firefighter service employee who is a member of this system in an amount equal to 12% minus the contribution rate paid by the employer pursuant to Subsection 49-23-301(2)(a) of the member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:

(i) is sponsored by the board; and  
(ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(b) The member may make voluntary deferrals to:  
(i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (1); or  
(ii) at the member's option, another defined contribution plan established by the participating employer.

(2) (a) The total amount contributed by the participating employer under Subsection (1)(a), including associated investment gains and losses, vests to the member upon accruing four years of service credit under this title.

(b) The total amount contributed by the member under Subsection (1)(b) vests to the member's benefit immediately and is nonforfeitable.

(3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (2)(a).

(b) A member may direct the investment of contributions made by a participating employer under Subsection (1)(a) only after the contributions have vested in accordance with Subsection (2)(a).

(c) A member may direct the investment of contributions made by the member under Subsection (1)(b).

(4) No loans shall be available from contributions made by a participating employer under Subsection (1)(a).

(5) No hardship distributions shall be available from contributions made by a participating employer under Subsection (1)(a).

(6) (a) Except as provided in Subsection (6)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a), all contributions, including associated investment gains and losses, made by a participating employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.

(b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:

(i) all contributions made by the previous participating employer on behalf of the member, including associated investment gains and losses, shall be reinstated upon the member's employment as a regular full-time employee; and

(ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (2)(a).

(c) The office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs or employer contributions made under this section.

(7) The office may request from any other qualified 401(k) plan under Subsection (1) or (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.

(8) The office may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Amended by Chapter 439, 2011 General Session

**49-23-303. Defined benefit eligibility for an allowance -- Date of retirement -- Qualifications.**

(1) A member is qualified to receive an allowance from this system when:

(a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

(i) the member has accrued at least four years of service credit and has attained an age of 65 years;

(ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;

(iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years; or

(iv) the member has accrued at least 25 years of service credit.

(2) (a) The member's retirement date:

(i) shall be the 1st or the 16th day of the month, as selected by the member;

(ii) shall be on or after the date of termination; and

(iii) may not be more than 90 days before or after the date the application is received by the office.

(b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).

(3) (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.

(b) A member who is employed by a participating employer and who is also a part-time appointed board member is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).

Amended by Chapter 15, 2014 General Session

**49-23-304. Defined benefit service retirement plans -- Calculation of retirement allowance -- Social Security limitations.**

(1) (a) The retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an annual allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 25 years of service credit, the allowance is an amount equal to 1.5% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has 25 or more years of accrued credit in which event no reduction is made to the allowance.

(c) (i) Years of service includes any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(d) An Option One allowance is only payable to the member during the member's lifetime.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month:

(i) following the month in which the spouse died, if the application is received by the office within 90 days of the spouse's death; or



(ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month:

(i) following the month in which the spouse died, if the application is received by the office within 90 days of the spouse's death; or

(ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

(4) (a) If a retiree under Option One dies within 120 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(5) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

Amended by Chapter 439, 2011 General Session

**49-23-305. Allowance payable by lump-sum payment.**

(1) If a retiree's allowance, as computed under this chapter, amounts to \$25 or less, the allowance may be settled by the office by making a lump-sum payment of an amount actuarially equivalent to the allowance.

(2) A payment made under this section constitutes a full and complete settlement of the retiree's claim against this system.

Enacted by Chapter 266, 2010 General Session

**49-23-306. Lump-sum death benefit for retiree and spouse.**

(1) (a) Upon retirement, a retiree may elect to have the office deduct an actuarially determined amount from the retiree's allowance to provide a lump-sum benefit payable to a beneficiary upon the death of the retiree.

(b) Upon retirement, a retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.

(c) The board may make rules for the administration of this lump-sum death benefit.

(2) (a) For a retiree who pays for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree, the allowance shall be restored to its original amount.

(3) (a) A retiree may elect to cancel the lump-sum death benefit under this section.

(b) The cancellation under this Subsection (3) is irrevocable.

(c) Upon cancellation, the allowance shall be restored to its original amount and benefits under this section may not be paid.

Enacted by Chapter 266, 2010 General Session

**49-23-307. Defined benefit annual cost-of-living adjustment.**

(1) The office shall make an annual cost-of-living adjustment to:

(a) an original allowance paid under Section 49-23-305, if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.

(b) Annual increases in the Consumer Price Index in excess of 2.5% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 2.5%.

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

Enacted by Chapter 266, 2010 General Session

**49-23-308. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.**

(1) (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.

(b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.

(c) The member's retirement date shall be immediately after the purchase of years of service credit.

(d) The member shall pay at least 5% of the cost of the purchase.

(e) To qualify for a purchase of service credit under this section, the member shall:

(i) have at least five years of service credit; and

(ii) otherwise meet federal eligibility requirements.

(2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.

(3) Prior to making any purchase of years of service credit under this section, a

participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.

(4) Only members retiring from this system may purchase service credit under this section.

Enacted by Chapter 266, 2010 General Session

**49-23-309. Defined benefit adjustments -- Conditions -- Process -- Future years accrual.**

(1) In accordance with this section, the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if the member's contribution required under Subsection 49-23-301(2)(b) to the certified contribution rate for the defined benefit portion of this system exceeds 2% of the member's salary and:

(a) (i) the membership council created under Section 49-11-202 recommends an adjustment to the board in accordance with Subsection (2); and

(ii) the board recommends specific adjustments to the Legislature in accordance with Subsection (2); or

(b) an actuarial study that conforms with generally accepted actuarial principles and practices and with the Actuarial Standards of Practice issued by the Actuarial Standards Board and requested or commissioned by the board or the Legislature concludes:

(i) there is a significant likelihood that contribution rates will continue to rise; and

(ii) that participating employers are liable for system costs above the contribution rate established under Subsection 49-23-301(2)(a).

(2) If the conditions under Subsection (1)(a) or (b) are met, the Legislature may adjust benefits for the defined benefit portion of the Tier II Hybrid Retirement System accrued or applied for future years of service including:

(a) the final average salary calculation provided under Section 49-23-102;

(b) the years of service required to be eligible to receive a retirement allowance under Section 49-23-303;

(c) the years of service credit multiplier established under Subsection 49-23-304(2)(a);

(d) the annual cost-of-living adjustment under Section 49-23-307; or

(e) other provisions of the defined benefit portion of the Tier II Hybrid Retirement System.

(3) (a) Notwithstanding the provisions of Subsections (1) and (2), the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if an actuarial study described under Subsection (1)(b) concludes, due to current and projected economic conditions, member participation levels, and system structure, that the system:

(i) cannot reasonably be sustained under its current provisions;

(ii) is critically underfunded; and

(iii) has become unstable and is in risk of collapse.

(b) Subject to federal law, the adjustments under Subsection (3)(a) may include:

(i) conversion to a different type of retirement plan;

- (ii) equitable distribution of system assets to retirees and members; and
- (iii) a closure of the system.

Enacted by Chapter 439, 2011 General Session

**49-23-401. Contributions -- Rates.**

(1) Up to the amount allowed by federal law, the participating employer shall make a nonelective contribution of 12% of the participant's compensation to a defined contribution plan.

(2) (a) The participating employer shall contribute the 12% nonelective contribution described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:

- (i) is sponsored by the board; and
- (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(b) The member may make voluntary deferrals to:

- (i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (2); or
- (ii) at the member's option, another defined contribution plan established by the participating employer.

(c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.

(3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the participating employer under Subsection (2)(a) vests to the member upon accruing four years of service credit under this title.

(b) The total amount contributed by the member under Subsection (2)(b) vests to the member's benefit immediately and is nonforfeitable.

(c) Upon filing a written request for exemption with the office, the following employees are exempt from the vesting requirements of Subsection (3)(a) if the employee is a public safety service employee and is:

- (i) an executive department head of the state;
- (ii) an elected or appointed sheriff of a county; or
- (iii) an elected or appointed chief of police of a municipality.

(d) (i) A participating employer shall prepare a list designating those positions eligible for exemption under Subsection (3)(c).

(ii) An employee may not be exempted unless the employee is employed in a position designated by the participating employer under Subsection (3)(c).

(e) (i) All employer contributions made on behalf of an employee shall be invested in accordance with Subsection 49-23-302(3)(a) until the one-year election period under Subsection 49-23-201(2)(c) is expired if the employee:

- (A) elects to be exempt in accordance with Subsection (3)(c); and
- (B) continues employment with the participating employer through the one-year election period under Subsection 49-23-201(2)(c).

(ii) An employee is entitled to receive a distribution of the employer contributions

made on behalf of the employee and all associated investment gains and losses if the employee:

(A) elects to be exempt in accordance with Subsection (3)(c); and

(B) terminates employment prior to the one-year election period under Subsection 49-23-201(2)(c).

(f) Each participating employer shall:

(i) file each employee exemption annually with the office; and

(ii) update an employee exemption in the event of any change.

(g) (i) The office shall make rules to implement this Subsection (3).

(ii) The rules made under Subsection (3)(g)(i) shall include provisions to allow the exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or after July 1, 2011, on behalf of an exempted employee who began the employment before May 8, 2012.

(4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (3)(a).

(b) A member may direct the investment of contributions, including associated investment gains and losses, made by a participating employer under Subsection (2)(a) only after the contributions have vested in accordance with Subsection (3)(a).

(c) A member may direct the investment of contributions made by the member under Subsection (3)(b).

(5) No loans shall be available from contributions made by a participating employer under Subsection (2)(a).

(6) No hardship distributions shall be available from contributions made by a participating employer under Subsection (2)(a).

(7) (a) Except as provided in Subsection (7)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a), all contributions made by a participating employer on behalf of the member under Subsection (2)(a), including associated investment gains and losses are subject to forfeiture.

(b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:

(i) all contributions made by the previous participating employer on behalf of the member, including associated investment gains and losses, shall be reinstated upon the member's employment as a regular full-time employee; and

(ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (3)(a).

(c) The office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs of employer contributions made under this section.

(8) The office may request from any other qualified 401(k) plan under Subsection (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.

(9) The office may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Amended by Chapter 316, 2013 General Session

**49-23-402. Defined contribution distributions for disabled members.**

For a person who is disabled and receives contributions under Subsection 49-11-404(4)(b), the disabled member may begin receiving distributions from the defined contributions made by the participating employer on behalf of the disabled member when the person would have been eligible to retire if the person was covered by the defined benefit portion of the Tier II hybrid retirement system under Part 3, Tier II Hybrid Retirement System.

Enacted by Chapter 266, 2010 General Session

**49-23-403. Eligibility to receive a retirement allowance for a benefit tied to a retirement date for defined contribution members.**

(1) As used in this section, "eligible to receive a retirement allowance" means the date selected by the member who is a participant under this part on which the member has ceased employment and would be qualified to receive an allowance under Section 49-23-303 if the member had been under the Tier II Hybrid Retirement System for the same period of employment.

(2) The office and a participating employer shall make an accounting of years of service credit accrued for a member who is a participant under this part in order to calculate when a member would be eligible to receive a retirement allowance for purposes of establishing when a member may be eligible for a benefit tied to a retirement date that may be provided under Section 67-19-14.4, this title, another state statute, or by a participating employer.

Enacted by Chapter 439, 2011 General Session

**49-23-501. Death benefit -- Eligibility for death benefit -- Benefit calculation -- Payment of claim.**

(1) The office shall provide a death benefit for members of this system.

(2) The board shall make rules to administer the death benefit provided by this section and may, in accordance with federal law, establish:

- (a) benefit levels;
- (b) classes of members; and
- (c) a living benefit option.

(3) This death benefit is payable when:

(a) the member dies prior to the member's retirement date or dies under circumstances which Subsection 49-23-304(4) requires to be treated as the death of a member before retirement;

(b) the office receives acceptable proof of death; and

(c) benefits are not payable under Section 49-23-306.

(4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:

- (a) the return of any member contributions under this chapter; plus
- (b) a percentage of the final average salary of the member to be determined by the board.

(5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.

(6) The cost of the death benefit shall be paid by the participating employer in addition to the contribution rate established under Section 49-23-301 or 49-23-401.

(7) The portion of the death benefit provided under Subsection (4)(b) may not be paid to the beneficiary of an inactive member unless the death of the member occurs either:

- (a) within a period of 120 days after the last day of work for which the person received compensation; or

- (b) while the member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of work for which compensation was received.

(8) The death benefit provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(9) The death benefit paid to the beneficiary of an inactive member, except as otherwise provided under Subsection (7), is a lump-sum return of the member's member contributions.

(10) Payment of the death benefit by the office constitutes a full settlement of any beneficiary's claim against the office and the office is not liable for any further or additional claims or assessments on behalf of the member.

(11) Unless otherwise specified in a written document filed with the office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.

(12) A death benefit under this section may not be paid on behalf of a retiree under this system.

Amended by Chapter 316, 2013 General Session

**49-23-502. Death of married members -- Service retirement benefits to surviving spouse.**

(1) As used in this section, "member's full allowance" means an Option Three allowance calculated under Section 49-23-304 without an actuarial reduction.

(2) Upon the request of a deceased member's lawful spouse at the time of the member's death, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:

- (a) the member has:

- (i) 15 or more years of service credit;

- (ii) attained age 62 with 10 or more years of service credit; or

- (iii) attained age 65 with four or more years of service credit; and

- (b) the member dies leaving a spouse to whom the member has been married

at least six months immediately prior to the death date.

(3) The spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:

(a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or

(b) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

(4) The allowance payable to a surviving spouse under Subsection (2) is:

(a) if the member has 25 or more years of service credit at the time of death, the surviving spouse shall receive the member's full allowance;

(b) if the member has between 20-24 years of service credit and is not age 60 or older at the time of death, the surviving spouse shall receive two-thirds of the member's full allowance;

(c) if the member has between 15-19 years of service credit and is not age 62 or older at the time of death, the surviving spouse shall receive one-third of the member's full allowance; or

(d) if the member is age 60 or older with 20 or more years of service credit, age 62 or older with 10 or more years of service credit, or age 65 or older with four or more years of service credit at the time of death, the surviving spouse shall receive an Option Three benefit with actuarial reductions.

(5) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any other payments made under Section 49-23-501 and shall constitute a full and final settlement of the claim of the spouse or any other beneficiary filing a claim for benefits under Section 49-23-501.

Amended by Chapter 439, 2011 General Session

**49-23-503. Death of active member in line of duty -- Payment of benefits.**

If an active member of this system dies, benefits are payable as follows:

(1) If the death is classified by the office as a line-of-duty death, benefits are payable as follows:

(a) If the member has accrued less than 20 years of public safety service or firefighter service credit, the spouse at the time of death shall receive a lump sum of \$1,000 and an allowance equal to 30% of the member's final average monthly salary.

(b) If the member has accrued 20 or more years of public safety service or firefighter service credit, the member shall be considered to have retired with an Option One allowance calculated without an actuarial reduction under Section 49-23-304 and the spouse at the time of death shall receive the allowance that would have been payable to the member.

(2) (a) A volunteer firefighter is eligible for a line-of-duty death benefit under this section if the death results from external force, violence, or disease directly resulting from firefighter service.

(b) The lowest monthly compensation of firefighters of a city of the first class in this state at the time of death shall be considered to be the final average monthly salary of a volunteer firefighter for purposes of computing these benefits.



(c) Each volunteer fire department shall maintain a current roll of all volunteer firefighters which meet the requirements of Subsection 49-23-102(12) to determine the eligibility for this benefit.

(3) (a) If the death is classified as a line-of-duty death by the office, death benefits are payable under this section and the spouse at the time of death is not eligible for benefits under Section 49-23-502.

(b) If the death is not classified as a line-of-duty death by the office, benefits are payable in accordance with Section 49-23-502.

(4) (a) A spouse who qualifies for a monthly benefit under this section shall apply in writing to the office.

(b) The allowance shall begin on the first day of the month following the month in which the:

(i) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or

(ii) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

Amended by Chapter 15, 2014 General Session

**49-23-601. Long-term disability coverage.**

(1) A participating employer shall cover a public safety employee who initially enters employment on or after July 1, 2011, under Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term disability program.

(2) (a) A participating employer shall cover a firefighter employee who initially enters employment on or after July 1, 2011, under Chapter 21, Public Employees' Long-Term Disability Act.

(b) In accordance with this section, a participating employer shall provide long-term disability benefit coverage for a volunteer firefighter as provided under Section 49-16-701.

(c) The office shall ensure that the cost of the long-term disability benefit coverage provided under Subsections (2)(a) and (b) is funded with revenue received under Section 49-11-901.5.

Amended by Chapter 298, 2012 General Session